

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DEBBIE HARPER,

Plaintiff,

v.

Civil Action No. 5:17CV12
(STAMP)

UNITED STATES POSTAL SERVICE
and UNITED STATES OF AMERICA,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING DEFENDANT'S MOTION TO DISMISS

On March 30, 2017, defendant United States Postal Service ("the Postal Service") filed a motion to dismiss all claims against it under Federal Rule of Civil Procedure 12(b)(6). ECF No. 5. The Postal Service argues that the plaintiff's claims arise out of the Postal Service's alleged tortious actions such that they must comply with all provisions of the Federal Tort Claims Act ("FTCA") (codified in scatter sections of 28 U.S.C.). Thus, the Postal Service argues that, under the FTCA, the only proper defendant in this action is the United States of America. The plaintiff did not file a response to this motion.

Section 401 of the Postal Reorganization Act of 1970 ("PRA"), 39 U.S.C. §§ 101-5605, provides a general waiver of the Postal Services's sovereign immunity. 39 U.S.C. § 401. However, § 409(c) provides that the FTCA "shall apply to tort claims arising out of activities of the Postal Service." Id. § 409. The FTCA requires that any civil action for the tortious conduct of a federal employee acting within the scope of the employee's office

or employment be brought against the United States and that the United States "be substituted as the party defendant." 28 U.S.C. § 2679(d). Thus, any civil action for alleged tortious conduct arising out of the activities of the Postal Service must be brought against the United States in accordance with the FTCA and not against the Postal Service. Accordingly, the Postal Service's motion to dismiss (ECF No. 5) is GRANTED. The plaintiff's claims against the United States remain.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: April 19, 2017

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE